

Union Calendar No. 405

94TH CONGRESS
2D SESSION

H. R. 11462

[Report No. 94-816]

IN THE HOUSE OF REPRESENTATIVES

JANUARY 22, 1976

Mr. HENDERSON introduced the following bill; which was referred to the Committee on Post Office and Civil Service

FEBRUARY 10, 1976

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

To provide for the acquisition of career status by certain employees of the Federal Government serving under overseas limited appointments.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 3304a (a) of title 5, United States Code, is
4 amended by striking out the words "under an overseas lim-
5 ited appointment or".

6 SEC. 2. The amendment made by the first section of
7 this Act shall take effect on October 1, 1976, or on the date
8 of the enactment of this Act, which ever date is later.

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94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } No. 94-816

CAREER STATUS FOR CERTAIN FEDERAL EMPLOYEES
WITH OVERSEAS LIMITED APPOINTMENTS

FEBRUARY 10, 1976.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. HENDERSON, from the Committee on Post Office and Civil Service,
submitted the following

REPORT

[To accompany H.R. 11462]

The Committee on Post Office and Civil Service, to whom was referred the bill (H.R. 11462) to provide for the acquisition of career status by certain employees of the Federal Government serving under overseas limited appointments, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The sole purpose of H.R. 11462 is to allow certain overseas employees of the Federal Government who are serving indefinite appointments to receive career appointments noncompetitively.

COMMITTEE ACTION

H.R. 11462 was ordered reported by a unanimous voice vote of the Committee on Post Office and Civil Service on January 29, 1976.

The Subcommittee on Manpower and Civil Service held public hearings (Serial No. 94-34) on a similar bill, H.R. 509, on July 10, 1975. The provisions of H.R. 11462 were approved unanimously by the subcommittee on October 6, 1975.

STATEMENT

Overseas limited appointments (OLA's) are authorized by Civil Service Commission rules and regulations for the purpose of appointing U.S. citizens to overseas positions in the competitive service with-

out regard to competitive requirements. There are three types of overseas limited appointments:

- (1) Indefinite—an appointment without a time limitation;
- (2) Term—an appointment made for a period not in excess of 5 years when the time limitation is imposed as part of a general program for rotating career employees between overseas areas and the United States after specified periods of overseas service; and
- (3) NTE (not to exceed)—an appointment made for a period not to exceed 1 year.

While employees serving under OLA appointments are entitled to certain Federal employment benefits, they are not eligible for competitive career status by virtue of their OLA appointments. They do not have reduction-in-force protection, eligibility for civil service retirement, or any kind of "return rights" to positions in the United States on completion of their overseas appointments.

H.R. 11462 would amend section 3304a(a) of title 5, United States Code, to provide for conversion to a career appointment of an individual serving under an *indefinite* OLA appointment. The bill *does not apply* to term or NTE OLA's including Department of Defense overseas teachers. In order to be converted, an individual serving under an indefinite OLA appointment must:

- (1) complete, without a break in service of more than 30 days, a total of at least 3 years of service;
- (2) pass a suitable noncompetitive examination;
- (3) be recommended to the Civil Service Commission by the appointing authority with a certification that his work performance for the past 12 months has been satisfactory;
- (4) meet Civil Service Commission qualification requirements for the position and be otherwise eligible for career appointment.

As of January, 1975 there were 39,334 U.S. citizens employed in civilian positions by all U.S. agencies in foreign countries. Of this amount 29,395 were employed by the Department of Defense. Within these totals 1,527 employees were serving under overseas limited appointments including only 221 indefinite appointments which would be the only category of employees eligible for conversion to career status under the provisions of H.R. 11462. Approximately 180 of the 221 indefinite OLA appointments are in the Department of Defense. All of the DOD indefinite appointments were made prior to 1966 when the Department instituted the 5-year rotation policy for overseas employees. The indefinite appointment authority has not been used by DOD since 1966. Most of the DOD employees have had considerable service, as much as 25-30 years or longer in many cases, with 17.1 years being the average. Most have not had an opportunity to become a part of the career workforce either because of the absence of appropriate civil service examinations or because, even though properly qualified, they were not sufficiently high enough on a register to be reached for an appointment.

While the principal effect on H.R. 11462 is to provide for the conversion of the DOD indefinite appointees, the committee is aware that the bill does affect employees in several other agencies. In that regard,

it is the intent of the committee that the Civil Service Commission give serious study to the question of whether the indefinite appointment authority needs to be continued in non-Defense agencies.

SECTION ANALYSIS

The first section of H.R. 11462 amends section 3304 a(a) of title 5, United States Code, by striking out the reference contained therein to overseas limited appointments. The effect of this amendment is to provide for the conversion to a career appointment of an individual serving under an *indefinite* overseas limited appointment when that individual satisfies the various conditions as specified in section 3304 a(a) for noncompetitive conversion.

Generally, under the existing provisions of section 3304 a(a), an individual serving in the competitive service under an indefinite appointment, except an overseas limited appointment, is entitled to have his appointment converted to a career appointment when—

- (1) he completes a total of at least 3 years of service in such a position;
- (2) he passes a suitable noncompetitive examination;
- (3) the appointing authority recommends to the Civil Service Commission that the appointment be converted and certifies that the employee's work performance for the past 12 months has been satisfactory; and
- (4) the employee meets Civil Service Commission qualification requirements for the position and otherwise is eligible for the career appointment.

It is important to note that the appointment conversion right provided under section 3304a(a) will be extended, by virtue of this amendment, only to those individuals who are serving under overseas limited appointments of *indefinite* duration. There is no intent to extend such conversion right to individuals serving under other types of overseas limited appointments such as appointments for a specific term of years or appointments which are not to exceed a specific date or period.

Section 2 of the bill provides that the amendment made by the first section of the bill to section 3304a(a) of title 5 shall take effect on October 1, 1976, or on the date of the enactment of the act, whichever date is later. It is the committee's intent that an individual serving under an indefinite overseas limited appointment who, on the effective date of the amendment, has completed at least 3 years of service in such position would be eligible for conversion to a career appointment upon satisfying the remaining requirements of section 3304a(a).

ESTIMATED COSTS

The committee was unable to obtain specific data upon which to estimate the cost of this legislation. However, since H.R. 11462 would affect approximately only 200 individuals it is fair to state that any costs resulting from the enactment of this legislation would be negligible.

COMPLIANCE WITH CLAUSE 2(1)(3) OF HOUSE RULE XI

With respect to the requirements of clause 2(1)(3) of House Rule XI—

(a) the Subcommittee on Manpower and Civil Service is vested under committee rules with legislative and oversight jurisdiction over the subject matter of H.R. 11462 and concluded that the law should be amended in the manner provided under this legislation;

(b) this legislation does not provide new budget authority or new or increased tax expenditures for a fiscal year, and therefore no statement is required pursuant to section 308(a) of the Congressional Budget Act of 1974;

(c) no estimate or comparison of costs has been received by the committee from the Director of the Congressional Budget Office, pursuant to section 403 of the Congressional Budget Act of 1974; and

(d) the committee has received no report from the Committee on Government Operations of oversight findings or recommendations arrived at pursuant to clause 2(b)(2) of House Rule X.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of House Rule XI, the committee has concluded that the enactment of H.R. 11462 will have no inflationary impact on prices and costs in the operation of the National economy in view of the negligible costs involved.

AGENCY VIEWS

There are set forth below the reports of the U.S. Civil Service Commission and the Office of Management and Budget on H.R. 509, a bill similar to H.R. 11462. It should be noted that while the following administration reports recommend against enactment of this legislation, a representative of the Civil Service Commission advised the committee during the hearing on H.R. 509 that the Commission would interpose no further objection to the enactment of the bill if the Congress determines that such legislation is fully warranted.

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., March 10, 1975.

Hon. DAVID N. HENDERSON,
Chairman, Committee on Post Office and Civil Service, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in further response to your request for this Commission's views on H.R. 509, a bill "To provide for the acquisition of career status by certain employees of the Federal Government serving under overseas limited appointments."

H.R. 509 would amend section 3304a of title 5, United States Code, to extend the coverage of that section to employees serving under overseas limited appointments of indefinite duration. This would mean that after 3 years' service under such an appointment an employee who

U.R. 816

met the requirements of section 3304a could acquire competitive status and be given a career appointment noncompetitively.

Underlying the merit system is the idea that employees are to be selected on the basis of relative ability through open competition. Therefore, any provision for initial entry into the competitive service on a noncompetitive basis distorts the system. In our view, only very basic considerations of equity or public policy can justify the distortions such a provision causes.

We recognize that many of the employees whom H.R. 509 is designed to help have served almost an entire career under overseas limited appointments. Whether this justifies noncompetitive entry into the competitive service is open to serious question. In any event, we do not believe that H.R. 509 is the appropriate answer to any question of equity that may exist.

Basic differences exist between the employees now covered by section 3304a and overseas limited employees. Our regulations permit overseas limited appointments *without competition* instead of requiring use of competitive examinations because it is often clearly to the advantage of the Government to employ qualified U.S. citizens already in the overseas area in which a vacancy exists in preference to giving citizens in every location a chance to be considered. This avoids the travel and transportation costs required to move an employee, his family, and his personal possessions overseas; eases the demand for Government-supplied housing (if such housing is involved); avoids the payment of certain overseas allowances granted to employees transported from the United States; and avoids the delays incident to state-side recruitment, employee preparation for travel, and orientation to the overseas situation and duty station.

The fact is that for the vast majority of positions filled by overseas limited appointments a sufficient number of eligibles could readily have been obtained through open competitive examination if we had chosen to try. In many cases, existing registers already contained an adequate supply of qualified applicants. In many others, we could easily have obtained enough eligibles simply by announcing new examinations. Instead, agencies were permitted to make overseas limited appointments without competition.

On the other hand, the indefinite employees now covered by section 3304a are the incumbents of continuing positions brought into the competitive service through takeover of a public or private enterprise or revocation of an excepting authority, but who do not qualify under the Commission's regulations for immediate conversion to career or career-conditional employment. Recognizing that requiring the separation of these employees when their positions are brought in would be neither fair to the employees nor supportive of the Government's interest, the Commission has authorized their retention in status quo (an indefinite-type appointment). Section 3304a recognizes that it is inequitable to keep these employees in limbo for an extended period. It places a limit on their length of service in status quo and provides for their noncompetitive conversion to career employment if they meet established requirements and their agencies want to keep them.

The other employees now covered by section 3304a—those with TAPER appointments (temporary appointments pending the estab-

lishment of a register)—are also in a very different position from overseas limited employees. A TAPER appointment is made only in the absence of qualified eligibles on a list resulting from an appropriate competitive examination. Conversion is justified for these employees too on the basis that they should not be required to serve indefinitely in a continuing position under less than a full career appointment. Significantly, the only reason they did not receive career-type appointments initially was that a sufficient register of eligibles was not available when they were first appointed. Again, section 3304a assures that these TAPER appointments are terminated after a reasonable period by providing for the conversion or separation of the employees involved.

It is these basic differences between overseas limited appointments on the one hand and TAPER and status quo appointments on the other that led Congress, when enacting section 3304a in 1967, to specifically exclude overseas limited employees from the coverage of that section.

In summary, there are significant differences between the employees now covered by section 3304a and overseas limited employees which, in our view, make it inappropriate to extend the coverage of the section to the latter group. Aside from that, we are concerned about equity, not only for these employees but others who might be affected by this legislation. For example, in a reduction-in-force, employees converted noncompetitively under this legislation would be able to displace shorter service career employees who had to compete for their positions.

It is possible that the problems of overseas limited employees can be resolved administratively in a manner consistent with the various equities concerned. One possibility might be to convert these employees to excepted appointments under Schedule B. Under this Schedule these employees would be covered under the Civil Service retirement system and would be placed in a somewhat higher retention category, but not as high as for career employees with competitive appointments. Another possibility would be to explore whether these employees can be reached for selection from competitive registers.

In this connection, we will need to obtain more information about these employees and their situation, as well as about future overseas employment needs generally, before we can reach any decision on what should be done about persons who have been employed for extended periods under overseas limited appointments. Among other things, we will have to consider whether overseas limited appointments of indefinite duration are appropriate any longer. We will also have to consider the implications of a change in the status of overseas limited employees from the standpoint of fringe benefits coverage and cost. If, for example, these employees were to be granted career status along the lines proposed in H.R. 509, they would come under the Civil Service retirement system and would be given credit for all their service for this purpose. At present they are covered under Social Security. This would mean then that these employees would be able to accrue dual benefits for the same period of service.

If after further study we find an administrative approach feasible, we will take appropriate action to implement it. Meanwhile, we strongly recommend that H.R. 509 not be enacted.

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The Office of Management and Budget advises that from the standpoint of the administration's program there is no objection to the submission of this report.

By direction of the Commission:

Sincerely yours,

ROBERT HAMPTON,
Chairman.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., March 11, 1975.

Hon. DAVID N. HENDERSON,
Chairman, Committee on Post Office and Civil Service, House of Representatives, Cannon House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to the committee's request for the views of this office on H.R. 509, "To provide for the acquisition of career status by certain employees of the Federal Government serving under overseas limited appointments."

The purpose of this bill is to allow employees who have served at least 3 years under an overseas limited appointment to acquire competitive civil service status noncompetitively.

In its report the Civil Service Commission states its reasons for recommending against enactment of H.R. 509. We concur with the views expressed by the Commission. Further, we are concerned with the bill's open-ended effect, because no information is now available to indicate the total number of employees in all agencies serving under overseas limited appointment. Thus, the cost impact of potential non-competitive conversions, associated with the dual retirement coverage that would accrue, is unknown.

Accordingly, for the reasons stated above, and in the report of the Civil Service Commission, we recommend against enactment of H.R. 509.

Sincerely,

JAMES F. C. HYDE, Jr.,
*Acting Assistant Director
for Legislative Reference.*

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, existing law in which no change is proposed is shown in roman):

SECTION 3304a OF TITLE 5, UNITED STATES CODE CHAPTER 33—EXAMINATION, SELECTION, AND PLACEMENT

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H.R. 816

SUBCHAPTER I—EXAMINATION, CERTIFICATION, AND APPOINTMENT

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§ 3304a. Competitive service; career appointment after 3 years' temporary service

(a) An individual serving in a position in the competitive service under an indefinite appointment or a temporary appointment pending establishment of a register (other than an individual serving [under an overseas limited appointment or] in GS-16, GS-17, or GS-18) acquires competitive status and is entitled to have his appointment converted to a career appointment, without condition, when—

(1) he completes, without break in service of more than 30 days, a total of at least 3 years of service in such a position;

(2) he passes a suitable noncompetitive examination;

(3) the appointing authority (A) recommends to the Civil Service Commission that the appointment of the individual be converted to a career appointment and (B) certifies to the Commission that the work performance of the individual for the past 12 months has been satisfactory; and

(4) he meets Commission qualification requirements for the position and is otherwise eligible for career appointment.

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